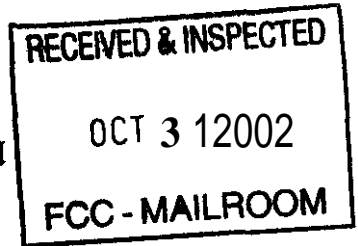


Before the
Federal Communication & Commission
 Washington, D.C. 20554



In the Matter a)

Amendment of Section 73.202(b),)

Table of Allotments,)

FM Broadcast Stations.)

(Chillicothe, Dublin, Hillsboro and)

Marion, Ohio)

TO: Chief, Audio Division)

MB Docket No. 02-266

RM-10557

OPPOSITION TO "MOTION FOR LEAVE TO FILE LATE COMMENTS"

The Committee for Competitive Columbus Radio (the "Committee"), by its attorney, hereby respectfully opposes the Motion for Leave to File Late Comments, filed in this proceeding by Citicasters Licenses, Inc., and Citicasters Company ("Citicasters") on October 22, 2002. In opposition thereto, it is alleged:

1. This proceeding involves a Notice of Proposed Rule Making ("NPRM") issued pursuant to a petition filed by the Citicasters companies. At paragraph 2 of the Appendix to the NPRM, the Commission states as follows:

"Showings Required. Comments are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments, even if it only resubmits or incorporates by reference its former pleadings. It

should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.”

Thus, the Commission put Citicasters on notice that it needed to file timely comments in support of its proposed allotments and failure to do so could result in denial of the requested allotments. The NPRM also advised Citicasters that the comments would need to be filed on or before October 21, 2002. Citicasters, however, did not file comments by that date. Instead, it asserts that due to an “inadvertent error”, “the law firm that represents the Joint Parties failed to deliver the Comments on time . . .”, and asks for permission to file late.

2. Two rules are applicable here. Section 1.415 provides for the filing of comments in rule makings and for the establishment of deadlines, and Section 1.415(d) provides that, “No additional comments may be filed unless specifically requested or authorized by the Commission.” Here, the Commission has neither requested, nor authorized the filing of any late comments. So, Section 1.415(d) provides no comfort to Citicasters. The other rule that is applicable is Section 1.46. Section 1.46(a) provides that, “It is the policy of the Commission that extensions of time shall not be routinely granted.” Section 1.46(b) provides as follows:

“Motions for extension of time in which to file responses to petitions for rulemaking, replies to such responses, comments filed in response to notice of proposed rulemaking, replies to such comments and other filings in rulemaking proceedings conducted under Subpart C of this part shall be filed at least 7 days before the filing date. If a timely motion is denied, the responses and comments, replies thereto, or other filings need not be filed until 2 business days after the Commission acts on the motion. In emergency situations, the Commission will consider a late-filed motion for a brief extension of time related to the duration of the emergency and will consider motions for acceptance of comments, reply comments or other filings

‘A redundancy. All errors are inadvertent.

made after the filing date.”

Here, Citicasters did not file any requests for extension of time “at least 7 days before the filing date”, nor did Citicasters allege any “emergency situation”. Hence, Section 1.46(b) provides no comfort to Citicasters.

3. The Commission has a general policy of accepting late-filed comments where a proceeding is uncontested. Colstru. Montana, 12 FCC Rcd 6063 (All. Br. 1997) at ftnt. 1, citing Santa Isabel. Puerto Rico, 3 FCC Rcd 2336 (1988). This proceeding, however, is not uncontested. To the contrary, it is being hotly contested by the Committee and by Infinity Broadcasting Operations, Inc. Therefore, the policy of accepting late-filed comments in an uncontested proceeding is of no benefit to Citicasters.

4. In contested proceedings, like this one, the Commission has uniformly rejected late-filed comments, except in extraordinary circumstances. Pleasanton. Texas, 15 FCC Rcd 3068 (All. Br. 2000) at ftnt. 2; Berlin. New Hamushire, 1999 WL 700526 (All. Br. 1999) at ftnt. 1. As the Commission observed in Carolina Beach. North Carolina, 7 FCC Rcd 544 at para. 20, “Acceptance of late-filed comments supporting **an** allotment proposal is limited to situations where there is no opposition to the proposal and where there would be no adverse impact on another pending proposal. Memorandum Opinion and Order, Moscow. Ohio: Paris. et al.. Kentucky, 5 FCC Rcd 927 (1990). In Amor Family Broadcasting Group v. FCC, 918 F.2d 960 (D.C. Cir. 1990), the court affirmed the Commission’s refusal to consider **an** untimely filed expression of interest in an allotment where acceptance would cause an adverse impact on a pending proposal. The court acknowledged that the Commission’s refusal to accept the late filing resulted in the denial of a first local service **to** the community, noting, ‘However, while provision of first local service is a Commission priority

[citation omitted], it cannot be sought at the expense of all procedural requirements.’ 918 F.2d at 963.”

5. The Appellant in Amor cited two cases which, it claimed, were inconsistent with the Commission’s policy of accepting late-filed comments only in uncontested cases: Camden and Rockland, Maine, 3 FCC Rcd 3621 (1988), and Roland and Heavener, Oklahoma, 3 FCC Rcd 2684 (1988). The Court found, however, that while these cases had been initially contested by the filing of counterproposals, the counterproposals were either withdrawn or resolved by the time the FCC’s Allocations Branch decided to accept the late-filed comments; in short, by the time the tardy comments were filed, the cases had become uncontested. Thus, these cases provided no support for the Appellant in Amor, nor do they provide any support to Citicasters in this proceeding.

6. In Ontario, California, 2002 WL 1733281 (2002), the Video Division dismissed late-filed comments filed in a DTV proceeding, with the following observation:

“Loma Linda Broadcasting Network, Inc. (LLBN), submitted a petition for an extension of time to file its comments late. LLBN claims that the delay in filing was due to the fact that its counsel was traveling during the week preceding the filing deadline and was unable to electronically submit the comments because of an ‘operational error’ in the Commission’s Electronic Comment Filing System (ECFS) system. We deny LLBN’s petition, and dismiss its late-filed comments. We find that LLBN has not provided a sufficient justification **as** to why it could not have filed its comments in a timely fashion. First, it is the responsibility of the **party** submitting comments to ensure that the documents are delivered to the Commission on time. Gosnell, Arkansas, et al., MM Docket No. 87-619, 4 FCC Rcd 6170 (1989). Furthermore, LLBN’s counsel’s reliance on the claimed inoperability of the Commission’s ECFS system is misplaced. In fact, the Commission has specifically excluded the filing of comments in broadcast allotment proceedings from electronic filing. See Electronic Filing of Documents in Rulemaking Proceedings, 13 FCC Rcd 11322 (1998) and Section 1.49(f) of the Commission’s Rules.” Ontario at ftnt. 3.

This is exactly the situation here; no justification has been shown for filing late. The two cases cited by Citicasters involved highly specialized situations not present here.²

7. It is not a matter of whether Citicasters' opponents will or will not be prejudiced. Neither is it relevant whether, if the allotments are denied, Citicasters can try again. As shown in the Committee's original Comments, Citicasters' proposals have no merit and are contrary to the public interest. Under these circumstances, there is no basis for waiving the rules to allow the submission of late-filed comments in the absence of very special circumstances. No such special circumstances have been shown to exist.

Respectfully submitted,

October 30, 2002

THE COMMITTEE FOR COMPETITIVE
COLUMBUS RADIO

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²Willows, California, 11 FCC Rcd 9180 (1996); and Bagdad and Chino Valley, Arizona, 11 FCC Rcd 14459 (1996). In each of these cases, comments were prepared, dated and sent to the FCC before the deadline, but were delayed by extraordinary events. That's not the case here.

CERTIFICATE OF SERVICE

I, Traci Maust, a secretary in the law office of Lauren A. Colby, do hereby certify that copies of the foregoing have been sent via first class, U.S. mail, postage prepaid, or by overnight courier this 30th day of October, 2002, to the offices of the following:

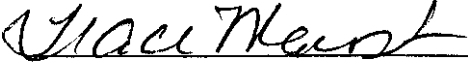
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